

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>**

CASE NO. A-6613

PETITION OF DAVID KING AND ROSALEEN DOERFLER-KING

OPINION OF THE BOARD

(Opinion Adopted May 8, 2019)
(Effective Date of Opinion: May 15, 2019)

Case No. A-6613 is an application for two variances necessary for the proposed construction of a foyer addition. The proposed construction requires a variance of 5.10 feet as it is within 24.90 feet of the front lot line. The required setback is thirty (30) feet, in accordance with Section 59-4.4.8.B.2 of the Zoning Ordinance. In addition, the proposed construction requires a variance of 4.70 feet as it is within 25.30 feet of the side street lot line. The required setback from that lot line is also thirty (30) feet, in accordance with Section 59-4.4.8.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on May 8, 2019. Petitioners David King and Rosaleen Doerfler-King appeared at the hearing in support of the application, and were represented by Soo Lee-Cho, Esquire. Ms. Lee-Cho called Shawn Buehler, AIA, of Bennett Frank McCarthy Architects, Inc., as a witness in support of the requested variances.

Decision of the Board: Variances **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 13, Block 3, Kenwood Park Subdivision, located at 6824 Granby Street, Bethesda, MD, 20902, in the R-90 Zone. It is a 9,935 square foot corner lot which is bordered on the southeast side by the thru-street portion of Granby Street (side street lot line), and on the northeast side by the Granby Street cul-de-sac (front lot line). See Exhibits 3 and 8.
2. The Statement of Justification ("Statement") submitted with the variance application notes that the existing house was built in 1957, and that the 1953 Zoning Ordinance, which was in effect at the time of construction, "required a minimum front setback of only 25 feet in the R-90 zone as opposed to the 30 feet currently required under

the 2014 Zoning Ordinance.” The footnotes to the Statement note that both the minimum front lot line and the side street line setbacks in effect at the time were 25 feet, and that “[t]he R-90 zone’s minimum front setback standard was first modified to 30 feet under the 1958 Zoning Ordinance, which went into effect on June 1, 1958.” See Exhibit 3. As a result, the Statement indicates that the existing house “is now a nonconforming structure that is located closer to the lot lines than the current zoning standards would permit.” The Statement goes on to explain that while the proposed construction “seeks simply to enclose an existing open porch area,” it is still considered “new construction” and thus requires a variance “despite the fact that the new addition would extend no further toward the street than the existing porch element and would be setback the same amount as the rest of the house.” See Exhibit 3.

3. The Statement asserts that the proposed development “substantially conforms with the established historic or traditional development pattern of the neighborhood” because the “vast majority” of the houses in the neighborhood were constructed at the same time as the Petitioners’ house, and thus deviate from the 30 foot setback now required. See Exhibit 3. The Petitioners had a survey of the neighborhood done indicating the locations of houses relative to the front lot line which illustrates this. See Exhibit 4(b). The Petitioners describe the results of this survey in their Statement. Of note, they indicate that “[t]he corner lots are particularly set close to the street. The buildings on the 5 corner lots shown on the survey (Lots 19, 13, 9, 6, and 28) range from 25.2 – 26.4’ from Granby. The requested 25.3’ side street setback is well within the standard pattern of development along Granby Street.” See Exhibit 3.
4. The Statement indicates that the Petitioners purchased this property in 2015, and thus are not responsible for the location of the existing home on the property. It further indicates that the proposed construction will simply “fill in the notch of a previously existing covered porch” in order to create a 58.5 square foot first floor foyer, and that “[n]o additional area is requested other than the extension of the existing walls.” The Statement notes that in addition to maintaining the footprint of the existing structure, the location of the foyer “is both in line with the existing building and the existing pattern of the neighborhood.” See Exhibit 3.
5. The Statement asserts that the grant of the requested variances will not be adverse to the use and enjoyment of neighboring properties, as evidenced by the letters of support included in the record, and “will not impair the intent and integrity” of the 1990 Bethesda Chevy Chase Master Plan.” See Exhibits 3 and 7(a)-(d).
6. At the hearing, Ms. Lee-Cho explained that there is currently a covered porch at the corner of the existing house, and that the Petitioners are seeking to enclose that area up to the existing “wall lines” to create a foyer.

Ms. Lee-Cho oriented the Board to the property, and explained that in 1957, when this property was developed, the setback in the R-90 Zone from the front lot line

was 25 feet. She provided the Board with a copy of Section 107-7 of the 1953 Zoning Ordinance, which sets forth this restriction. See Exhibit 12.¹ Ms. Lee-Cho stated that the home on the subject property and the majority of the other homes in this neighborhood were built to this 25-foot setback, and that the variances requested are consistent with this 25-foot setback. She stated that being located in a neighborhood that was developed at a time when the setback requirements were less than the current setback requirements constituted an unusual or extraordinary condition peculiar to the subject property, and that the resultant development of this neighborhood in conformance with the earlier (lesser) setback constituted a pattern.

7. Petitioner David King testified that he and his wife own this property in the name of a family trust. He testified that they purchased the property in September, 2015, as an “aging-in-place” home. Mr. King testified that he and his wife have worked with an architect to develop a staged plan to modernize their house to enable them to live there for the next 20 years. He testified that the first thing they sought to address was accessibility, noting that the current entrance to the home is difficult to navigate because of the placement of stairs just inside of the front door, and that with the proposed foyer, they were seeking to provide a straight entry to their house in order to better accommodate the needs of those with wheelchairs or other mobility aids.

Mr. King testified that he and his wife have spoken with all of their adjacent and confronting neighbors, as well as a few others, about their variance request. He testified that everyone they spoke with voiced verbal support for their request, and that four of their neighbors returned letters of support. See Exhibits 7(a)-(d). In response to Ms. Lee-Cho noting that the letters of support that the Petitioners had prepared for their neighbors to submit misstated the extent of the incursion into the side street lot line setback by 0.20 feet, such that the house would project 4.70 feet into that setback as opposed to 4.50 feet, Mr. King testified that he and his wife had gone back to their neighbors to inform them of that error, and that no one had an issue with this difference.

Mr. King testified that the existing covered porch is essentially a narrow walkway, one door-width wide.

8. Shawn Buehler, AIA, testified that he is the architect of record for the Petitioners' project. He testified that this is the first of a multi-phased vision for the Petitioners' home. Mr. Buehler testified that the corner of this house is a roofed porch, and that the Petitioners are seeking to convert that to enclosed space.

¹ Section 107-7(d)(1) of the 1953 Zoning Ordinance provides in relevant part that “[e]ach lot shall have a front building line at least twenty-five feet from and parallel to the front lot line or a proposed front street line” Section 107-7(d)(2) provides in relevant part that “[e]ach corner lot shall have a side building line at least twenty-five feet from and parallel to the side street line or a proposed side street line” See Exhibit 12.

Regarding Exhibit 4(b), the Survey Plat, Mr. Buehler testified that he had walked up and down the Petitioners' street to see how many of the houses met the required setback, and to determine if there was a discernable pattern. He testified that after discerning that there was a pattern, he had a licensed surveyor prepare the Survey Plat. Mr. Buehler testified that of the 25 houses included in the survey, more than half (14) are constructed with projections into the 30-foot setback. He then testified that the majority of those houses have setbacks of approximately 25 feet, and detailed the setbacks of several of the properties.

Mr. Buehler testified that he was familiar with the variance standards set forth in the Zoning Ordinance. He testified that the proposed construction comports with the established development pattern of this street, as he had previously testified and as evidenced by the Survey Plat. See Exhibit 4(b). He testified that this pattern of homes being located in the setback was not the result of any actions by the Petitioners. Mr. Buehler testified that the requested variances are the minimum reasonably necessary to carry the existing front walls of this house to the corner, and would not cause any additional encroachment on the setbacks than already exists. He testified that granting the requested variances would not be adverse to the use and enjoyment of the abutting or confronting neighbors, as evidenced by the overwhelming support received by the Petitioners, noting that of the eight closest neighbors, four sent letters of support, three verbally indicated their support, and the last is an absentee owner. Finally, Mr. Buehler testified that the requested variances can be granted without substantial impairment to the intent and integrity of the applicable master plan.

FINDINGS OF THE BOARD

Based on the binding testimony of the Petitioner and the evidence of record, the Board finds that the requested variances can be granted. The variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.ii the proposed development uses an existing legal nonconforming property or structure;

The Board finds that the house on this property was built in 1957, at which time the 1953 Zoning Ordinance required setbacks of 25 feet from the front lot line and side street lot line. The Board further finds that the applicable setbacks were changed to 30 feet in 1958, and that the existing house, having been constructed when the 1953 Zoning Ordinance was in effect, does not meet those setbacks. See Exhibits 3 and 4(a). Thus the Board finds that the existing house is a legal nonconforming structure, and that the proposed development uses this structure, in satisfaction of this element of the variance test.

Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the Statement, the Survey Plat, and the testimony of Mr. Buehler, that 14 of the 25 homes included in the neighborhood survey violate the required 30-foot setbacks, and that a substantial number of those homes are set back approximately 25 feet from the front lot line, presumably because at the time this neighborhood was developed, the 1953 Zoning Ordinance contained a 25-foot setback requirement from the front and side street lot lines. See Exhibits 3, 4(b), and 12. The Board finds that this constitutes a pattern of development for this street or neighborhood, and further finds that the house on the subject property substantially conforms with this pattern, in satisfaction of this element of the variance test. See Exhibit 4(a).

2. Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;

The Petitioners purchased this property in 2015, and therefore the Board finds that they did not construct or have control over the placement of the existing house, which occurred in 1957, or over the development pattern in the neighborhood. See Exhibit 3. Accordingly, the Board finds that the special circumstances or conditions applicable to this property were not the result of actions by the Petitioners.

3. Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;

The Board finds that the requested variances are minimal in that they do not increase the footprint of the existing home, but rather allow for the enclosure of an existing open porch "notch" at the corner of the home in order to create a modest 58.5 square foot first floor foyer space that is "in line with the existing building and the existing pattern of the neighborhood." See Exhibits 3 and 4(a). In support of this finding, the Board also notes the testimony of Mr. Buehler that the grant of the requested variances would not cause any additional encroachment on the setbacks than already exists. Because the existing home is located in both the front and side street setbacks, and the grant of the requested variances will not increase this encroachment, the Board finds that the requested variances are the minimum needed to allow this extension of the existing home to proceed, and thus to overcome the practical difficulties that would otherwise be imposed by compliance with the setback restrictions of the Zoning Ordinance.

4. Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;

The Board finds that the proposed enclosure of this open porch notch continues the residential use of the home, and can be granted without substantial impairment to the intent and integrity of the Bethesda Chevy Chase Master Plan.

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that allowing the proposed enclosure of this front porch notch will not infringe on the use and enjoyment of abutting or confronting properties, as indicated by the Statement and as confirmed by the testimony of Mr. King and Mr. Buehler, and the letters of support included in the record. See Exhibits 3 and 7(a)-(d). The Board notes that the grant of the requested variances will not bring this home closer to the front and side street lot lines than it already is, and that its current location is consistent with that of other houses in the neighborhood. See Exhibits 3 and 4(b).

Accordingly, the requested variances of 5.10 feet from the front lot line setback and 4.70 feet from the side street lot line setback are **granted**, subject to the following conditions:

1. The Petitioners shall be bound by all of the testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting this variance; and
2. Construction shall be in accordance with Exhibits 4(a) and 5(a)-(d).

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, with Stanley B. Boyd, Vice Chair, and Katherine Freeman in agreement, and with Jon W. Cook necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 15th day of May, 2019.



Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.